



**Montgomery County
Board of Elections**

Post Office Box 4333
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February 28, 2023

via email donna.duncan@maryland.gov only
Chairman William G. Voelp
Boardmember Severn E. S. Miller, Esquire
Boardmember T. Sky Woodward, Esquire
Boardmember Michael G. Summers
Boardmember Justin A. Williams, Esquire

via email linda.lamone@maryland.gov only
Linda H. Lamone, Esquire
State Administrator of Elections

via email nikki.charlson@maryland.gov only
Nikki Charlson
Deputy State Administrator
State Board of Elections
P. O. Box 6486
151 West Street, Suite 200
Annapolis, Maryland 21401-0486

RE: Recommended Improvements for the 2024 Presidential Election

Dear Boardmembers, Ms. Lamone & Ms. Charlson:

At our January 2023 meeting, the Montgomery County Board of Elections ("MCBOE") discussed possible improvements for the upcoming 2024 election cycle. Some of the improvements will require legislation, and

the Board Members are talking with elected officials to encourage them to support legislative changes on a number of topics. However, MCBOE discussed other enhancements that should be made by the Maryland State Board of Elections. Set forth below are MCBOE's recommendations:

(1) "Please use black or blue ink."

During the canvass, there were quite a few ballots that would not scan because a voter filled in the ovals with pencil. In an effort to reduce the time required to duplicate the ballot and/or fill in the ovals with ink, MCBOE respectfully requests the following appear in the instructions on the ballot: **"Please use black or blue ink to fill in the ovals."**

(2) Expand the functionality of the ballot marking device.

MCBOE has continued to see a great increase in the number of voters who want to use the ballot marking device ("BMD.") Set forth below is a breakdown of the percentage of in-person voters who utilized the BMDs.

- Gubernatorial Primary:
 - Early Voting GP: 69.5%
 - Election Day GP: 42.7%
 - Total for 2022 GP: 49.5%
- Gubernatorial General:
 - Early Voting GG: 61.1%
 - Election Day GG: 26.3%
 - Total for GG: 35.4%

Despite the significant increase in popularity, the functionality of the BMDs still need improvement. In the Primary, Montgomery County had one candidate for County Council at large who appeared on the second page of the ballot. In addition, the second page did not have a banner to reflect the corresponding race. MCBOE respectfully requests that funds should be expended to allow fourteen (14) candidates on a page. BMDs currently allow only seven (7) candidates per page, and candidates who

appear on the second page (because their names are later in alphabetical order) understandably feel that they are at a decided disadvantage.

(3) State Board of Elections' Contract with the vendor for Vote by Mail Ballots.

MCBOE observed that it frequently took two (2) weeks or more for voters to receive their mail-in ballot. In the Primary, there were 5,660 Provisional Ballots cast by voters who requested a vote by mail ballot. In the General, there were 6,935 voters who had requested a vote by mail ballot and later voted provisionally. While there are, of course, a number of factors that could contribute to the high number of voters who requested a mail-in ballot and then ultimately voted provisionally, we believe that a large percentage of those voters had not received their ballot within a reasonable time and/or did not have confidence that their ballot had been timely received by the MCBOE. In an effort to ameliorate that problem, we suggest that the State Board of Elections' contract with the successful vendor should require the vendor to place the ballot in the U.S. Mail stream within two business days of receiving the request.

(4) Rejecting "in part" rather than the entire Provisional Ballot in a Primary because the voter voted the incorrect party ballot.

MCBOE would appreciate learning the State Board's rationale for rejecting the entire Provisional Ballot when the voter votes the incorrect party ballot in a Primary Election. In the 2022 Primary, MCBOE rejected 690 Provisional Ballots for this reason. In doing so, voters were deprived of the opportunity to vote for the Montgomery County Board of Education races, which are not partisan. (Montgomery County had one fairly close Board of Education race during the 2022 election cycle.)

As the State Board is aware, MCBOE (as well as every other local Board) duplicates "in part" Provisional Ballots and counts all races which the voter is otherwise eligible to vote. It would seem that the same logic would apply to the School Board races. MCBOE would appreciate learning

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the State Board's rationale for treating those that vote an incorrect party ballot differently from the other "in part" Provisional Ballots processed by local Boards.

Finally, MCBOE would like to thank the members of the State Board and the State Board staff for their hard work.

Sincerely yours,

A handwritten signature in blue ink that reads "Nahid Khozeimeh". To the right of the signature, there is a small handwritten mark that looks like "bom".

Nahid Khozeimeh
President, on behalf of the members of
the Montgomery County Board of
Elections

NK:bjap

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March 17, 2023

Via Email Only

Nahid Khozeimeh, President
Montgomery County Board of Elections
P.O. Box 4333
Rockville MD 20849-4333

Dear Ms. Khozeimeh,

Thank you for your letter dated February 28, 2023, in which you share the Montgomery County Board of Elections' recommendations for the 2024 election cycle and recognize the work of this office. I extend the same gratitude to the members and staff of the Montgomery County Board of Elections.

1. *"Please use black or blue ink"*: Before the 2024 elections, we will review the instructions on the ballot and if there is sufficient space, add this instruction.
2. *Expand the functionality of the ballot marking device*: Adding more candidates to each screen of the ballot marking device requires an upgrade to the voting system software. At this time, the vendor does not have a software suite that addresses the concerns we identified during our 2021 testing of the vendor's proposed software upgrade, and considering the timeline for software development and federal certification, the vendor will not have a solution in time for the 2024 elections. The request for proposals for the new voting system solution will include a requirement to explain how candidate names are displayed on the ballot marking device.
3. *Contract term for vendor producing mail-in ballot packets*: The contract with the vendor producing and mailing ballot packets already requires the vendor to mail or ship ballot packets "no later than 48 hours after receiving the [data] export." See 2.3.8.7b of the Request for Proposals (RFP D38B1600011). The vendor met this requirement during the 2022 elections.

The process to receive a mail-in ballot packet has several steps. They are:

1. A voter submits a **REQUEST** for a mail-in ballot:
 - a. If the request is submitted via our website, the request is loaded into MDVOTERS and is available for local board processing the day after the voter submitted the online request.
 - b. If the request is a paper or in-person request, the process is defined by the local board.
2. **PROCESSING** of voter requests for a mail-in ballot in MDVOTERS is done by the local boards. The processing time depends on the processing backlog at the local board.
3. Once the local board processes the requests in MDVOTERS, local boards elect a **DELIVERY** method: either 1) local boards provide the ballot themselves (e.g., walk-in

request), or 2) they assign it to be sent by the vendor. If the ballot is assigned to the vendor:

- a. Twice a week, SBE exports data for voters whose requests for mail-in ballots were processed since the prior export and provides the vendor with this export.
- b. The vendor analyzes the data for errors and then produces and mails ballot packets within 48 hours of receiving the export.
- c. The USPS delivers the ballot packet. We tracked the average delivery time during the mailing window for the 2022 elections, and the USPS delivered most ballot packets in less than four days of the ballot packets entering the mail stream.

As you noted, there are various reasons why voters who requested an mail-in ballot decided to vote in person and had to vote a provisional ballot due to their previous request for a mail-in ballot. We are reviewing the same data and looking for ways to reduce the number of provisional ballots cast by voters who also requested a mail-in ballot. Your letter suggests that you have data to support the conclusion that a "large percentage of those voters had not received their ballot within a reasonable time and/or did not have confidence that their ballot had been timely received" by the Montgomery County Board of Elections, and we would appreciate receiving the data on which this conclusion is based.

For future elections, it would be helpful for us to receive information about the voters reporting delayed ballots as the reports are received. This enables us to track the ballot through the production process and USPS tracking system and if necessary, notify the USPS of the need to track specific ballot packets.

4. *"Reject" versus "Accept in Part" for provisional ballots cast in primary election:* The requirement to reject this ballot is based on Election Law Article, §11-303(d)(2)(i), which states that the local board shall reject a provisional ballot if the "local board determines that the individual who cast the provisional ballot is not qualified to vote *that provisional ballot.*" (emphasis added). The statute refers to ballots, not contests. A voter who votes a ballot for a party with which the voter is not affiliated is not qualified to vote *that* ballot. As a result, that ballot must be rejected and no contests on it counted.

Regulation 33.16.05.3C(4) of the Code of Maryland Regulations implements this rationale by requiring a local board to accept a provisional ballot application only if the party affiliation the voter indicated on the provisional ballot application matches the voter's party affiliation of record. When a voter decides to vote a primary election ballot that is different from that voter's party affiliation of record, the voter's provisional ballot must be rejected.

The practice of duplicating and counting a provisional ballot "in part" comes directly from a specific exception provided by the Election Law Article. It covers the situation where a voter's address does not fall within the precinct where the voter is voting (so the voter casts a provisional ballot). Under § 11-303(e)(2), a local board in that situation must count "only the votes cast by the voter... applicable to the precinct in which the voter resides." Because the Election Law Article provides partial counting for this specific circumstance, counting some, but not all, contests on a provisional ballot is permitted. The Election Law Article does not similarly permit partial counting of a provisional ballot cast because of a voter's party registration. Therefore, partial counting of non-partisan races is not similarly allowed.

Letter to Ms. Khozeimeh

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Thank you again for your recommendations, and we look forward to working with the Montgomery County Board of Elections as we prepare for the 2024 elections.

Sincerely,

A handwritten signature in cursive script that reads "Linda H. Lamone".

Linda H. Lamone